

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3577 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BALUBEN M HARIJAN

Versus

STATE OF GUJARAT

Appearance:

MR MC BHATT for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 03/03/2000

ORAL JUDGEMENT

#. This petition is filed by Baluben Maganbhai Harijan and National Dairy Development Board Employees' Union ("Union" for short) against the State praying therein to issue appropriate writ, in terms of para 14 of the

petition which reads as under :-

"14. In view of the aforesaid premises, the petitioners approaches Your Lordships by way of this petition under Article 226 of the Constitution of India and prays that Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ direction or order :

(A) directing the respondent no.1 to immediately initiate an inquiry and lodge prosecutions under relevant provisions of law and before the Competent Courts against respondent no.2, Shri C.M.Chauhan and Shri Kotecha;

(B) Permanently restraining respondent no.2 and other officers of respondent no.1 from interfering with any of the trade union activities of the members of petitioner no.2 union, in any manner whatsoever;

(C) direct the respondent no.1 to immediately take departmental action against respondent no.2;

(D) permanently restraining respondent no.2 from interfering with any of the activities of petitioner no.2 union and its members and further restraining him from harassing the petitioner no.1 in any manner whatsoever;

(E) granting such other and further reliefs as deemed fit, by the Hon'ble Court with a view to protect petitioner no.1 and members of petitioner no.2 ;

(F) award the costs of the petition;

(G) during the pendency and final disposal of Special Civil Application, Your Lordships may be pleased to make an order restraining respondent no.23 from interfering with any of the activities of petitioner no.2 union and petitioner no.1 and further directing respondent no.1 to initiate prosecutions for all the incidents narrated in Annexures "A", "B" and "C" before the Competent Courts and further directing the respondent no.1 to suspend and transfer respondent no.2 away from Kheda district."

#. The case of the petitioners was that petitioner no.2 is a registered trade union. The petitioner no.1 was working as a labourer at Bid at the project of National

Dairy Development Board (NDDB). Respondent no.2 V.B.Sharma was serving as Police Sub Inspector, at Mehmdabad, Dist. Kheda. He committed physical assault on employees. He had also beaten petitioner no.1. Since no proceedings were initiated against respondent no.2 as also again other persons responsible for illegal acts and involved in the incident, the present petition was filed. Initially notice was issued and thereafter the petition was admitted. An affidavit-in-reply was also filed by the State.

#. In 1999 when the petition was called out for final hearing, an order was passed by my learned brother D.C.Srivastava,J on December 10, 1999. In pursuance of the said order a further affidavit is filed by Additional Chief Secretary Home Department, Sachivalaya, Gandhinagar, and relevant material is also produced.

#. At the time of hearing of the petition it was stated by Mr.Sahani, learned counsel for the petition that from the affidavit-in-reply on record, it is clear that two persons were involved in beating petitioner no.1; (1) Head Constable Raijibhai and (2) P.S.I. V.B.Sharma, respondent no.2. Now so far as Head Constable Raijibhai is concerned, it has come on record that he died in October, 1997. He is also not made party respondent in the petition and in any case now he is no more. Mr.Sahani, therefore, does not make any prayer against any person other than respondent no.2. The question therefore requires to be considered regarding respondent no.2 alone, who was serving as Police Sub Inspector at the relevant time.

#. Now, it appears that departmental proceedings were initiated against Mr.Sharma and charge-sheet was also issued to him on February 20, 1987. It appears that in the inquiry, was not found guilty and an order was passed on July 5, 1990 by which he was exonerated. But the said order was taken in revision by Director General of Police, Ahmedabad and on July 3, 93, an order exonerating Mr.Sharma was reversed. It was held that he was guilty and was, therefore, punished Mr.Sharma was reverted from the post of Inspector of Police to Sub Inspector of police for a period of one year and was placed at minimum pay scale.

#. Being aggrieved by the said order, Mr.Sharma preferred an appeal under Sec.27 A of the Bombay Police Act, 1951. The appeal came to be allowed by the State Government and the punishment was reduced. His reversion from the post of P.I. to P.S.I. was set aside.

Instead, two increments were stopped for a period of two years without future effect. The said order was passed on December 7, 1995.

#. The grievance of Mr.Sahani is that while allowing the appeal and reducing the punishment, the State Government took into account long service rendered by the appellant and dismissal of the present petition, Special C.A.no.3577/87 (which is incorrectly written as 3577/77, the petition is SCA 3577/87) by the High Court by observing inter alia that the allegations leveled in the said petition were not believed.

#. Mr.Sahani submitted that the second fact was incorrect as SCA No.3577/87 was not disposed of and it is the present petition which is pending even today. When the attention of the Government was invited to the said fact, the Government modified the order on December 30, 1999 which is also made part of the record wherein it was stated that the words SCA No.3577/87 was disposed of by the High Court would stand deleted. Mr.Sahani strongly urged that this is illegal and contrary to law. According to him while reducing the punishment, the fact that serious allegations levelled against respondent no.2 in SCA No.3577/87 were not believed and the petition was dismissed by the High Court weighed with the appellate authority. When the petition was not dismissed and was pending, it has to be borne in mind by the appellate authority, The order dtd. December 30, 1999 passed by the Government, therefore, deserves to be set aside.

#. I have heard learned Asstt. Govt. Pleader also. In the facts and circumstances of the case, in my opinion, interest of justice would be served if the order passed by the State Government on 30.12.1999 is set aside by directing it to pass an order afresh in the light of the facts and circumstances of the case and after giving an opportunity of hearing to Mr.Sharma respondent no.2 who has not remained present in this court though served. I may state that I am not expressing any opinion on merits and State Government will decide the matter without being influenced by any observation made by me hereinabove. The State Government will also send the final decision to petitioner no.2 and to the learned counsel for the petitioner. Rule is made absolute to the aforesaid extent. Interim relief is vacated. No order as to costs.

kks